

RESOLUTION NO. 2008-04

**RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION
OF SANTA CLARA COUNTY DENYING THE PROPOSED INCORPORATION OF
THE TOWN OF SAN MARTIN**

WHEREAS, on February 7, 2007, a registered voter petition and application for the incorporation of the Town of San Martin was filed with LAFCO pursuant to Title 6, Division 1, commencing with Section 56000, et seq. of the Government Code ("Incorporation Proposal"); and

WHEREAS, Government Code section 56383 provides that LAFCO may establish a schedule of fees for the costs of proceedings; and

WHEREAS, LAFCO's Incorporation Policies provide that the actual costs for processing the incorporation application are the proponent's responsibility; and

WHEREAS, on June 25, 2007, LAFCO and the proponents of the San Martin incorporation proposal ("Proponents") entered into a Fee Agreement for the Incorporation Proposal ("Agreement"); and

WHEREAS, the Agreement mandates that Proponents are responsible for all costs and expenses of processing and reviewing the Incorporation Proposal, including but not limited to, the entire cost of staff time and all expenses incurred; and

WHEREAS, Section 5(c) of the Agreement requires that LAFCO provide a first invoice ("Invoice") to Proponents for staff costs and expenses 30 days prior to the date set for the first public hearing, and mandates that "LAFCO must receive payment in full on the invoice prior to the public hearing;" and

WHEREAS, on September 10, 2008, the Commission required that Proponent pay the Invoice no later than seventy-two hours from the date set for the public hearing on the Incorporation Proposal;

WHEREAS, on October 7, 2008, LAFCO provided Proponent with the Invoice in the amount of \$171,555.16;

WHEREAS, the Proponents failed to pay the Invoice by November 4, 2008, which is seventy-two hours prior to November 7, 2008, the date set for the public hearing on the Incorporation Proposal;

WHEREAS, the Agreement stipulates that failure by Proponent to pay LAFCO on a timely basis for the full amount of the Invoice will result in suspension of the incorporation process; and

WHEREAS, the Agreement also stipulates that LAFCO will not incur any liability whatsoever for suspension of processing or acting on the application for the incorporation of San Martin due to the late or nonpayment of fees by Proponents; and

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WHEREAS, LAFCO received Proponents' written request for State Controller review of the Draft Comprehensive Fiscal Analysis ("CFA") on October 30, 2008 with neither a deposit for review of the CFA nor an executed fee agreement covering LAFCO's participation in that review, as required pursuant to LAFCO's Incorporation Policies; and

WHEREAS, LAFCO received a deposit for review of the CFA at the end of the day on November 6, 2008, but without a fee agreement in the form approved by LAFCO Counsel pursuant to LAFCO's Incorporation Policies; and

WHEREAS, the Proponents are responsible for all costs and expenses of processing and reviewing the Incorporation Proposal and to determine otherwise would be detrimental to the public interest pursuant to Government Code section 56383 and would require the County, and member cities of LAFCO to pay for the Incorporation Proposal;

WHEREAS, it is in the best interest of the public and the public agencies that make up LAFCO that the Proponents pay in full for all costs and expenses for processing and reviewing the Incorporation Proposal pursuant to the Agreement;

WHEREAS, at its meeting on September 10, 2008, LAFCO discussed the schedule for the San Martin Incorporation proposal and set November 7, 2008 as the public hearing date for considering the Incorporation Proposal;

WHEREAS, the November 7, 2008 public hearing was noticed pursuant to the requirements in the Cortese-Knox- Hertzberg Local Government Reorganization Act; and

WHEREAS, at a public hearing on the Incorporation Proposal on November 7, 2008, the Commission considered and passed a motion directing staff to draft a resolution denying the Incorporation Proposal on the sole and exclusive basis of Proponents' failure to abide by the express terms of the Agreement by failing to pay LAFCO the full amount of the Invoice before the hearing.

NOW, THEREFORE, the Local Agency Formation Commission of Santa Clara County, DOES HEREBY RESOLVE, DETERMINE, AND ORDER as follows:

SECTION 1:

The Commission finds that Proponents violated the express terms of the Agreement by failing to timely pay LAFCO the full amount of the Invoice by November 4, 2008 and before November 7, 2008, the date of the public hearing on the Incorporation Proposal. The Agreement authorizes suspension of the incorporation process and therefore, the Commission shall not process the State Controller's review of the CFA.

SECTION 2:

Because of the significant amount of money owed and that is overdue to LAFCO and Proponents' violation of the express terms of the Agreement, and without review of the merits of the Incorporation Proposal, the Commission denies the Incorporation Proposal.

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SECTION 3:

Proponents' failure to abide by the express terms of the Agreement as listed in Section 2, is the sole and exclusive basis for the Commission's denial of the Incorporation Proposal.

SECTION 4:

The Incorporation Proposal is exempt from CEQA based upon the Commission's denial of the Incorporation Proposal pursuant to Section 15061(b)(4) of the State CEQA Guidelines.

SECTION 5:

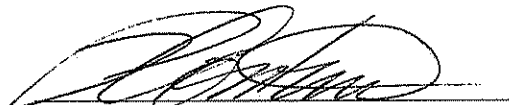
The Commission hereby waives the limitations of Government Code section 56884(a), which provides that no further proceedings shall be taken on the Incorporation Proposal and no similar Incorporation Proposal involving the same or substantially the same territory shall be initiated for one year after the date of adoption of this Resolution, and finds that these limitations are detrimental to the public interest, so long as Proponents have complied with the Agreement and paid LAFCO the full amount due to LAFCO.

PASSED AND ADOPTED by the Local Agency Formation Commission of Santa Clara County, State of California, on December 3, 2008, by the following vote:

AYES: COMMISSIONERS ALVARADO, CONSTANT, GAGE AND WILSON.

NOES: HOWE

ABSENT: NONE


Pete Constant, Chairperson
LAFCO of Santa Clara County

ATTEST:

APPROVED AS TO FORM AND LEGALITY:


Emmanuel Abello, LAFCO Clerk
Malathy Subramanian, LAFCO Special Counsel